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In re Application of	:	
GREEN, et al.	:	
Serial No.: 10/566,082	:	DECISION ON PETITION
PCT No.: PCT/CA04/01433	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 30 July 2004	:	
Priority Date: 01 August 2003	:	
Attorney Docket No.: 7865276MISjb	:	
For: PROCESS FOR PREPARATION OF	:	
FLAX PROTEIN ISOLATE	:	

This decision is issued in response to applicant's "Petition to Accept Application under Rule 37 CFR 1.47(a)" filed 18 October 2006 to accept the application without the signature of joint inventor, Radka Milanova.

BACKGROUND

On 30 July 2004, applicant filed international application PCT/CA04/01433 which claimed priority to a previous application filed 01 August 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 February 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 01 February 2006.

On 27 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an application data sheet.

On 05 May 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed.

On 18 October 2006, applicant filed the present petition under 37 CFR 1.47(a) to accept the application without the signature of joint inventor Radka Milanova.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Applicant has satisfied items (1), (3) and (4).

Applicant states in the present petition that Radka Milanova has refused to execute the application. Section 409.03(d) of the MPEP, **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Petitioner states that Radka Milanova has refused to execute the application. A review of the present petition and the accompanying papers reveals that applicants have not satisfied item (2) above, in that, the applicants have not shown that a bona fide attempt was made to present the application papers to Radka Milanova. Michael I. Stewart states that he mailed a copy of the application papers to Radka Milanova on 10 July 2006. A copy of the cover letter has been provided. However, petitioner fails to include evidence to

demonstrate that the materials were actually received by the nonsigning inventor at his/her last known address. Where the Office is being asked to accept the silence of the nonsigning inventor as evidence of a refusal to sign, petitioner must provide some evidence that the application materials have been received by the nonsigning applicant.

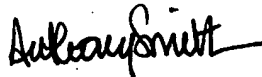
In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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